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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

BARCLAY KENYON and
 LISA KENYON,

Plaintiffs,

v.

GERALD MCLAUGHLIN, M.D., and
 THE UNITED STATES OF AMERICA,

Defendants.

Case No. C 08-4901 WHA

**SETTLEMENT AGREEMENT
 AND ~~PROPOSED~~ ORDER
 APPROVING SETTLEMENT**

SETTLEMENT AGREEMENT

Plaintiffs, Barclay Kenyon and Lisa Kenyon, and defendant, United States of America,
 hereby enter into this Settlement Agreement (the "Agreement"), as follows:

1. The parties hereby agree to settle and compromise Barclay Kenyon and Lisa Kenyon v. Gerald McLaughlin, M.D., and the United States of America, United States District Court for the Northern District of California, Case Number C 08-4901 WHA (the "Lawsuit"), under the terms and conditions set forth herein.

SETTLEMENT AGREEMENT AND ~~PROPOSED~~ ORDER APPROVING SETTLEMENT
 Case No. C 08-4901 WHA

4. This Agreement shall not constitute an admission of liability or fault on the part of the United States of America, its agencies, agents, servants, or employees, and is entered into by and between the parties for the purpose of compromising disputed claims and avoiding the expenses and risks of litigation.

1 5. This Agreement may be pled as a full and complete defense to any subsequent
2 action or other proceeding involving any person or party which arises out of the claims released
3 and discharged by this Agreement.

4 6. The Settlement Amount represents the entire amount of the compromise
5 settlement. The parties will each bear their own costs, attorneys' fees, and expenses, and any
6 attorneys' fees or liens owed by plaintiff will be paid out of the Settlement Amount and not in
7 addition thereto.

8 7. It is also understood by plaintiffs that, pursuant to Title 28, Section 2678 of the
9 United States Code, attorneys' fees for services rendered in connection with this Lawsuit shall
10 not exceed 25 percent of the Settlement Amount.

11 8. Payment of the Settlement Amount will be payable to "Brice A Tondre, P.C.
12 Attorney Client Trust Account."

13 9. Plaintiffs have been informed that payment of the Settlement Amount may take
14 sixty days or more to process, but defendant agrees to make good faith efforts to expeditiously
15 process the payment.

16 10. The parties agree that should any dispute arise with respect to the implementation
17 of the terms of this Agreement, plaintiffs shall not seek to rescind the Agreement and pursue
18 their original causes of action. Plaintiffs' sole remedy in such a dispute is an action to enforce
19 the settlement in the United States District Court. The parties agree that the United States
20 District Court will retain jurisdiction over this matter for purposes of resolving any dispute
21 alleging a breach of this Agreement.

22 11. In consideration of payment of the Settlement Amount and this Agreement,
23 plaintiffs hereby release and forever discharge the United States of America and any and all of
24 its past and present officials, employees, agencies, agents, attorneys, successors, and assigns
25 from any and all obligations, damages, liabilities, actions, causes of action, claims, and demands
26 of any kind and nature whatsoever, whether suspected or unsuspected, at law or in equity, known
27

1 or unknown, arising out of the allegations set forth in the pleadings in the Lawsuit.

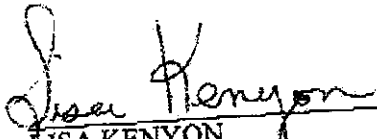
2 12. California Civil Code Section 1542 provides as follows:

3 A general release does not extend to claims which the creditor
4 does not know or suspect to exist in his or her favor at the time of
5 executing the release, which if known by him or her must have
6 materially affected his settlement with the debtor.

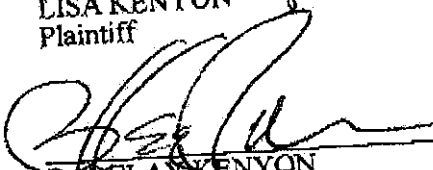
7 Plaintiffs, having been apprised of such language by their attorney, and fully understanding the
8 same, nevertheless waive the benefits of any and all rights she may have pursuant to Section
9 1542 and any similar provisions of federal law. Plaintiffs understand that, if the facts concerning
10 their injuries and the liability of the defendant for damages pertaining thereto are found
11 hereinafter to be other than or different from the facts now believed to be true, this Agreement
12 shall be and remain effective notwithstanding such difference.

13 13. This instrument shall constitute the entire agreement between the parties, and it is
14 expressly understood and agreed that this Agreement has been freely and voluntarily entered into
15 by the parties with the advice of counsel, who have explained the legal effect of this Agreement.
16 The parties further acknowledge that no warranties or representations have been made on any
17 subject other than as set forth in this Agreement. This Agreement may not be altered, modified,
18 amended, or otherwise changed in any respect except by writing, duly executed by all parties and
19 their authorized representatives.

20 Dated: 7/19/09

21 
22 LISA KENYON
23 Plaintiff

24 Dated: 7/19/09

25 
26 BARCLAY KENYON
27 Plaintiff

28 SETTLEMENT AGREEMENT AND ~~PROPOSED~~ ORDER APPROVING SETTLEMENT
Case No. C 08-4901 WHA 4

Dated: July 21, 2009

BRICE A. TONDRE, P.C.

Brice A. Tondre
BRICE A. TONDRE
Attorney for Plaintiffs

Dated: July 21, 2009

JOSEPH P. RUSSONIELLO
United States Attorney

Ellen M. Fitzgerald
ELLEN M. FITZGERALD
Assistant United States Attorney
Attorneys for Defendant

PROPOSED ORDER

THE ABOVE SETTLEMENT AGREEMENT IS APPROVED, AND IT IS SO ORDERED.

Dated: July 24, 2009

HON. W. J. Alsup
United States District Judge

